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## Problems & Issues Affecting Long-Term Governance Decisions

In the process of evaluating the options for a CALFED long-term governance structure, the Policy Group and stakeholders need to first review the status quo and determine if there is a need to consider a change. Essentially the following question needs to be answered:

How well will the current structure meet the principles and functions identified for CALFED long-term implementation?

The current CALFED structure and process was designed to address short-term needs (development of the Preferred Program Alternative, and disbursement of ecosystem restoration funding to support CALFED objectives being developed). It is therefore appropriate to review the current structure and process to determine its appropriateness for a long-term implementation program.

To date most of the attention on CALFED long-term governance has been on the oversight structure and Ecosystem Restoration Program structure. Consideration of the oversight and ERP structure and the relationship between them should help inform and guide decisions on the governing structure for the other CALFED program elements. The stakeholders have focused primarily on the ERP governing structure and currently support a joint state and federal entity for ERP implementation, although recently consideration has been given to implementation of the ERP as part of a new entity that would serve both the oversight and program management functions for ERP and the other program areas.

Described below is a brief summary of issues and problems associated with (1) continuing the status quo for CALFED oversight and (2) relying on existing agencies for ERP implementation. The issues and problems are raised with consideration of the principles and functions needed for long-term governance.

### Oversight Issues

1. Stakeholders have indicated the current structure does not provide an acceptable level of stakeholder and public participation--some of the concerns however may be addressed by recently adopted changes.

The existing structure provides for stakeholder and public involvement through technical committees and a FACA advisory council. Stakeholders have expressed strong concern with the current method for stakeholder involvement. Concerns have been expressed that there is not an adequate feedback loop between BDAC and Policy Group. There is concern that advice given to CALFED by BDAC is not being communicated and acted upon by Policy Group and reasons for

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CALFED decisions are not clearly provided. This is in part due to the fact that BDAC and Policy Group have seldom met together and that Policy Group meetings have not been public. Members of the Governance Work Group have expressed the need for a larger role by stakeholders in the decision-making process, such as having nonagency representatives on the decision-making body. The recent change to public meetings for Policy Group may address some of the stakeholder concerns by making the decision-making process more transparent.

- Should a decision-making body for CALFED oversight include nonagency representatives? If so, how should they be appointed and should there be specified qualifications for each position/appointment in order to provide for broad stakeholder representation?

2. *The existing structure has not established a formal role for elected officials/legislators*

Involvement by elected officials is one of the principles adopted for long-term CALFED governance. The CALFED Program has depended upon high level policy involvement by elected officials in the planning stage. This will need to continue in the implementation phase especially when controversial staged-decisions need to be made, and to compete successfully for funding against other newer initiatives. Although the current structure has involved elected officials in several ways (funding and stakeholder negotiations), it has not formalized a process for involvement by elected officials.

- Should legislation be adopted that establishes a mandate from the Legislature/Congress for implementation of the CALFED Program? Would this legislative mandate provide sufficient involvement by elected officials?
- Should legislators and other elected officials be given the responsibility for appointments to a CALFED governing board?
- Should a legislative advisory committee be established to provide for involvement by elected officials?

3. *The existing consensus-based decision rules may not be appropriate for a long-term structure.*

The Policy Group is in the process of refining the current decision-making rules and membership to provide for more efficient decision-making, increased accountability by CALFED agencies, and more durable decisions. For the interim, the Policy Group will continue to follow a state/federal consensus decision-rule.

With the refinement of the consensus-rule currently being proposed there may be less concern to adopt different decision rules for the long-term. However, even with improvement in the process, the consensus rule can be a time-consuming process. While this may be necessary for more significant decisions, it may not be appropriate for less significant and minor items. For

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this reason, the consensus rule may not be a workable process or supported politically for the long-term. While a basic premise of the CALFED Program is to resolve interagency conflicts and balance resource objectives, managing a multi-billion dollar program through consensus of multiple agencies could seriously limit the ability of the Program to meet its objectives in a timely manner. If decisions are delayed, stakeholder and legislative support could be reduced thereby further eroding the success of the Program.

- Should different decision rules be adopted for long-term governance?

4. *The existing process raises the concern that decisions and Program commitments may not be durable.*

The existing process and structure relies on commitments made by the CALFED agencies in a Framework Agreement (or MOU). This is a non-binding agreement that lays out the functions and tasks of the Policy Group, and the time line and process for meeting those tasks. This was appropriate for the planning phase of the program but may not provide the long-term support and assurances for implementation over 30 years or more.

- Should agency involvement and authorities be more formalized in the long-term to increase the likelihood that decisions will be durable and that participation and commitment by agencies will continue?
- Should legislation be adopted that defines the commitment and obligations of the agencies over the implementation period?

5. *The existing administrative structure limits the efficiency and success of Program implementation.*

The existing structure was established to support a short-term planning process. The Bay-Delta Program does not have the administrative authorities to oversee and manage a large, complex program over a 30 year period. The Program can not hire staff, receive direct appropriations, or enter into contracts. This lack of authority affects the ability of the Program to attract and retain qualified staff. Attracting a strong leader for the Program is critical and becomes more difficult if the administration of the Program is unnecessarily burdened. The inability to receive direct appropriations, and instead rely on funding appropriated to other agencies, can reduce the ability of the CALFED Program to influence funding to achieve Program priorities and thereby reduces the likelihood of meeting Program objectives.

- Should the CALFED governing body be supported by a permanent staffing organization established through legislation, with certain administrative authorities?

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## Ecosystem Restoration Issues

A substantial amount of time and effort has been put into the development of principles and functions applicable to the management and governance of the ERP. Through discussion with the BDAC Governance Work Group and other small groups of agency staff and stakeholders, a number of various options, ranging from the "existing agency" approach to various forms of "new entity" approaches have been developed. Throughout this process, a primary point of contention among agencies and stakeholders is the question whether the existing CALFED resource management agencies, primarily DFG, USFWS and NMFS can or should be the primary managers of the ERP. At the time of these discussions, the option of a new oversight entity had not been thoroughly considered. Establishment of a new entity for CALFED for oversight and for the program management and coordination of the ERP and the other program elements, may address some of the concerns raised by stakeholders about the ERP governing structure.

A review of ERP governance principles and functions raises the following issues regarding implementation of the ERP by existing agencies.

1. Existing agencies may not be able to provide adequate attention and focus on implementation of a large new program because of existing mandates and responsibilities.

The ERP is one of the largest and most complex ecosystem restoration programs in the United States. A critical issue for the stakeholders has been that a governing structure needs to be able to provide a strong focus and priority for the ERP to help assure effective implementation. Adding a complex and large program in dollars and scope, such as the ERP, to one of the existing agencies may make it difficult to maintain a high level of attention and focus. Existing agencies have many other mandates that would compete for the agencies attention. In addition, one of the principles for ERP governance is to form a state and federal partnership and no existing agency can provide that partnership. If two or more of the existing agencies were given the responsibility for ERP governance, it could complicate the decision-making and disperse the accountability for the program.

2. The existing agency structure does not provide strong stakeholder involvement in decision-making.

The stakeholder role is advisory for the current ERP program and for other resource management programs administered by existing agencies. Stakeholders have indicated that they should have a more direct involvement in the decision-making, and that public representatives should be part of a decision-making board for ERP. Establishing a decision-making board with public representatives can only be accomplished through a new legal structure.

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3. *Adding ERP to one of the existing agencies has the potential for conflicts between existing regulatory responsibilities and ERP responsibilities.*

The existing resource management agencies have existing authorities and mandates that may result in conflicts with the ERP. Stakeholders are concerned that addressing the different objectives and conflicting mandates within an single agency may result in weakening the ERP objectives. For example, ESA obligations vs. striped bass management, Suisun Marsh seasonal wetland protection vs. restoration of tidal wetlands, refuge water supply needs vs instream flow needs, and budget and funding conflicts between regulatory and resource management needs.

4. *Consolidation of state and federal programs and funding cannot be done with existing agency structure.*

The ERP will continue to rely on multiple funding sources. Existing agencies can currently receive state or federal appropriations but not both. Consolidation of state and federal funding will increase the efficiency and effectiveness for ERP implementation. For example, two funding sources are currently available--Proposition 204 and Bay Delta Act funds. In the interim CALFED has assumed the management responsibility for the two funds. However, the authority for the programs and funding rests in the Resources Agency and DOI, making the process cumbersome and inefficient. With the signing of the ROD an additional \$390 million will become available for the ERP. Relying on one existing state or federal agency for each funding source would continue to complicate the management of the funds.

5. *Stakeholders have a lack of trust and assurance that existing agencies will effectively implement the ERP.*

Finally, for many stakeholders, there is a lack of trust that the existing agencies will provide effective ERP implementation. There is a sense that a new single focus, single mission entity, adequately funded, with stakeholder involvement, will have a higher chance of successful program implementation.